

STATE OF NEW MEXICO

COUNTY OF TAOS

EIGHTH JUDICIAL DISTRICT COURT

PRESIDING JUDGE: EMILIO J. CHAVEZ

No. D-820-CR-2018-00168; No. D-820-CR-2018-00169; No. D-820-CR-2018-00171

STATE OF NEW MEXICO

V.

LUCAS MORTEN;
HUJRAH WAHHAJ;
SUBHANNAH WAHHAJ

ORDER OF DISMISSAL WITHOUT PREJUDICE

THIS MATTER having come before the Court on the Defendants' Motions to Dismiss under Rule 5-302(A)(3) NMRA, the Court having heard from the parties and being otherwise sufficiently advised,

LAW: **"[i]f a preliminary examination is not held within the time limits in this rule, the court SHALL dismiss the case without prejudice and discharge the defendant."**

FINDS:

1. The court has jurisdiction over the parties and the subject matter.
2. The facts, as they apply to each defendant, are the same for the purpose of the court's ruling.
3. On August 8, 2018, all defendants had a first appearance before the district court.
4. On August 14, 2018, the district court denied the state's motion for preventative detention.
5. The district court set conditions of release that had to be met prior to any of the defendants release.
6. None of the defendants were ever released from the detention center.
7. Rule 5-302(A)(1) NMRA reads, "**Time limits.** A preliminary examination shall be scheduled and held within a reasonable time but in any event **no later than ten (10) days**

if the defendant is in custody, and no later than sixty (60) days if the defendant is not in custody, of . . . **the first appearance**,” (emphasis added)

8. The ten days excludes weekends and holidays.
9. Therefore, the time for conducting a preliminary examination would have been August 22, 2018 or fourteen days after the first appearance.
10. The state **do not file a request**, in any of the three cases for preliminary examination.
11. As of August 29, 2018, the defendants have been in custody for twenty-one days from the date of first appearance.
12. Rule 5-302(A)(2) NMRA provides for extensions of time for a preliminary hearing. **The state never requested an extension of the court.**
13. The court is without authority to retroactively grant an extension following the expiration of the deadline. Regardless, there were no exceptional circumstances that justified the delay in conducting a preliminary hearing.
14. The state was not diligent in the prosecution of this case and adhering to the rules of criminal procedure.
15. Rule 5-302(A)(3) NMRA gives the court no discretion as to the remedy for violation of the rule.
16. Rule 5-302(A)(3) NMRA reads, **“[i]f a preliminary examination is not held within the time limits in this rule, the court shall dismiss the case without prejudice and discharge the defendant.”**

IT IS THEREFORE ORDERED that all pending claims are **dismissed without prejudice** for failing to comply with the time limits and the defendants are discharged.

IT IS FURTHER ORDERED THAT NOTHING IN THIS ORDER SHOULD BE INTERPRETED TO PREVENT THE STATE FROM LATER PROSECUTING THE DEFENDANTS FOR THE SAME OFFENSES BY FILING EITHER AN INDICTMENT OR AN INFORMATION.

Emilio Chavez 8/29/18
THE HONORABLE EMILIO J. CHAVEZ
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I, the undersigned Employee of the District Court of Taos County, New Mexico, do hereby certify that I served a copy of this document to all parties.

By: Apt. Sab Date: 8/29/2018

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